IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 131 OF 1999.

1. Manohar Shripati Kamnble,
2. Madhukar Ganpati Kamble,
3. Vijay Laxman Kamble
4. Balwant Dagadu Kamble ....Appellants
(Orig.Accd.Nos.1, 2 4 & 6)

V/s

The State of Maharashtra ....Respondent.

Ms.Racheeta Dhuru (appointed) for the appellants-orig.accd. Nos.1 and 2.

Mr. R.V. More, Adv. For appellants-orig.accd. Nos.4 and 6.

Mrs. P.H. Kantharia, APP for the State.

CORAM: V.G. PALSHIKAR
AND
SMT.NISHITA MHATRE, JJ.

18.3.2005.

Oral Judgment: (**Per Palshikar, J)**

Being aggrieved by the order of conviction and sentence passed by the Additional Sessions Judge, Sangli in Sessions Case No.65 of 1996 on 5.2.21999 the appellants-accused have preferred this appeal on the grounds mentioned in the memo of appeal and also verbally canvassed before us.

2. With the assistance of the learned counsel for the appellants and the learned Additional Public Prosecutor we have perused the entire evidence and reappreciated the

same.

3. The prosecution story as it emerges from our reappreciation of evidence stated briefly is that at about 10.00 p.m. On 11.12.1995 accused persons assaulted one Mahadeo Kamble with the aid of iron bar, stick, gupti etc. After he was taken to hospital he was declared dead. Immediately thereafter a complaint was lodged by one Kiran Kamble in Tasgaon police station which was recored as crime registered No.258/1995 against the accused persons who were eight in number. The accused were arrested around 5.30 in the afternoon on 12.12.1995. Police on the basis of this First Information Report conducted the investigation and the accused persons were prosecuted before the learned Additional Sessions Judge, Sangli in Sessions Case No.65 of 1996. The learned trial Judge on appreciation of evidence on record came to the conclusion that accused Nos.1, 2, 4 and 6 are guilty of the offence punishable under section 302 and other connected sections and accordingly convicted the accused to suffer imprisonment for life as stated above. It is this order of conviction and sentence which is impugned in this appeal by the appellants-original accused Nos.1, 2, 4 and 6 who are appellants 1 to 4 in this appeal.

4. The prosecution has examined as many as 12 witnesses to prove its case that the accused committed murder of the victim that being their common object. The contention of the learned counsel appearing on behalf of accused is that the entire evidence is so descripant, inadequate and contrary that cannot be held sufficient to warrant conviction of any of the accused for any of the offences for which they were

found guilty. According to the learned counsel even the evidence of recoveries is obviously unreliable if not fabricated. Conversely the learned Additional Public Prosecutor defended the judgment as one consistent with the requirement of law and have supported the findings of fact recorded by the learned trial Judge for coming to the conclusion that the present appellants were the assailants responsible for homicidal death of the deceased. We have to consider these rival submissions in the light of the evidence which we have again appreciated during the course of hearing of this appeal.

5. P. W. 1- Shrikant P. Bansode is the draftsman who drew the map of the spot and proved it as Ex.15. From this map it is therefore clear as to where the assault exactly took place. P. W. 2 – Dinkar P. Jadhav is a witness to the seizure of soil, pieces of bangles, chappals etc. from the scene of offence. Subsequently he was also called as panch to witness recovery of stick and crowbar at the instance of one Kalu Kamble. According to the witness crowbar and the stick was produced by the said Kalu Kamble and was seized by the police under panchnama which was ascribed to by the witness. At this stage it is pertinent to note that according to this witness the seizure took place at the instance of one Kalu Kamble from his place in Harijan vasti. We have to consider in this light the evidence of P. W. 7 – Bapu Kamble who claims to have seen the accused leaving the spot after hitting the victim and who has deposed very clearly that he saw the accused persons dropping stock and crowbar by side of the road. If this testimony of P.W. 7 is to be accepted then the entire evidence of P. W. 2 regarding seizure of the stick and crowbar at the instance of Kalu Kamble from Harijan vasti becomes doubtful. In effect the entire circumstances of seizure of the stick and crowbar is not beyond doubt. It

cannot be held with any certainty as to whether it was seized from Harijan vasti or it was recovered from road side where according to P.W. 7 it was dropped by accused. This is one of the major inconsistence in the evidence of the prosecution which we will have to consider while considering the totality of circumstances appearing against the accused persons.

6. P. W. 3- Arjun B. Jadhav is the panch to the seizure of clothes of the accused. His evidence does not have much of repercussions on the basic structure of the prosecution story.

7. P. W. 4 – Ratnabai Kamble claims to be an eye witness to the incident and has deposed in the Court. She has described the assault which according to her occurred and has named the accused Kisan Kamble, Madhukar Kamble and Manohar Kamble as the persons inflicting injuries on the person of the victim. She has also identified the accused in the Court. If this witness is believed then it is Madhukar, Kisan and Manohar who assaulted the victim as seen by this witness. However there is another witness P.W. 6 – Kiran Kamble who also claims to be an eye witness and is son of the victim who in his deposition has named accused persons and described the manner in which they assaulted the victim. But he states in very clear terms that P. W. 4 – Ratnabai Kamble came on the scene of offence after the accused left the spot. If this testimony of P.W. 6 – Kiran Kamble who is son of the victim is to be believed then it becomes very difficult to believe the testimony of Ratnabai that she was an eye witness to the assault. That being the situation the factual position is that P.W. 6 Kisan is the only witness who has

described the assault and has named the accused persons as the assailants.

8. Then we have to take into consideration the evidence of P.W. 7 – Bapu Kamble and P.W. 9 – Kalu Kamble who came to spot and saw accused running away from the spot. Each of them claims in the Court that they saw the accused persons dropping the stick and crowbar by the side of the road while running away from the spot. If this testimony of these two witnesses which corroborates each other is accepted, as observed earlier, recovery of the same at the instance of Kalu Kamble from Harijan vasti becomes doubtful. It would be pertinent to note that if this fact that the stick and crowbar was dropped by side of the road the spot panchnama should have revealed its existence, in any event the recovery would have been from that road side. These circumstances viz. Evidence of P.W. 2, recovery and seizure memo and evidence of P.Ws. 7 and 9 therefore create a serious doubt as to whether there factually was any seizure of stick and crowbar and if so at what place it was seized whether by side of the road or from Harijan vasti. It therefore raises serious question as to whether the weapons used for commission of offence were really seized or not and if so form what place. In the absence of any other cogent evidence to connect this recovery or seizure of the accused persons it is very difficult to accept the contention of the prosecution that these were the weapons used by the assailants for assaulting the victim.

9. It is true that P.W. - 8 Dr.Vinod Prabhu has conducted the post mortem and has proved that the death of the victim was homicidal in nature, but in our opinion the evidence as brought on record in relation to recovery of crowbar, stick and gupti is

concerned several material infirmities exist due to which this recovery cannot be accepted without hesitation. The very fact that these recoveries are not proved nor is there any evidence connecting these weapons to the accused or user thereof by the accused and in the absence of any reliable eye witness it becomes difficult to accept the story of the prosecution in its entirety.

10. In our opinion, the entire evidence does not inspire confidence so as to come to the definite finding that it is the accused only who have assaulted the victim and that they were connected with the weapons allegedly seized by the police. In our opinion, reasonable doubt does arise to the mind of reasonable prudent man that the prosecution has not come with the complete and true story as regards the happening of the assault on the victim and infringing evidence of connection of the accused. In such circumstances we deem it proper to give benefit of doubt to the accused and set aside the order of conviction and sentence for lack of convincing evidence. In the result therefore the appeal succeeds and is allowed. The impugned order of conviction and sentence is set aside. Accused Nos.4 and 6 are already on bail. Their bail bonds stand cancelled. Accused Nos.1 and 2 be released forthwith if not otherwise required.